(1998) 03 AP CK 0091

In the Andhra Pradesh High Court

Case No : Writ Petition No. 34238 of 1997

M. Venkata Ramana APPELLANT

Vs

Collector and District Register, Hyderabad Dist. and Another RESPONDENT

Date of Decision : 23-03-1998

Acts Referred:

Registration Act, 1908 — Section 47
Stamp Act, 1899 — Section 47

Citation : (1998) 4 ALD 458 : (1998) 4 ALT 626 : (1998) 2 APLJ 101

Hon'ble Judges : Bilal Nazki, J

Bench : Single Bench

Advocate : Mr. P.V. Sanjaya Kumar, for the Appellant; Government Pleader for Revenue, for the Respondent

Judgement

1. Rule Nisi.

2. The petitioner is a retired Deputy Director, Information and Public Relations Department, Government of A.P. He states that prior to his retirement from the Government service the petitioner applied the State Government in the year 1983 for allotment of a residential plot of land for construction of a house. The Government issued orders on 19-2-1987 directing the A.P. Housing Board to sell him a plot measuring 233.33 Sq. yards at Santosh Nagar Colony, Hyderabad at the rate of Rs.600/- per Sq. yard. The petitioner felt that the value fixed at Rs.600/- per Sq. yard was excessive. He challenged the fixation of price through Writ Petition No. 9575/87 before this Court. The Writ petition was disposed of on 10-6-1991. The Court held that the price fixed at Rs.600/-per Sq. yard. was arbitrary and directed the respondents therein to re-fix the market value in the light of the basic value fixed by the Department of Registration for similar lands in the locality and also in accordance with the observations made in the order. The order of the Court was further clarified by another order on 8-7-1992 by which respondents therein were directed to fix the price as on 19-2-1987. Pursuant to the orders of the Court the Housing Board re-fixed the market value

of the land at Rs.400/- per Sq. yard. The petitioner again filed a Writ petition being W.P. No. 12070/93 again challenging the fixation of price at Rs.400/-per Sq. yard. In the meantime, the Government of A.P. issued a notice vide letter No. 1266/ HG.2/93-II, dated 3-8-93 by which the petitioner was threatened that the allotment made in his favour will be cancelled as the petitioner had failed to pay the land cost and other charges payable by him. He was further informed that he was not entitled to claim the plot as a house had been purchased by his wife. The petitioner again filed another Writ petition being W.P. No. 13629/93. This Court passed interim orders staying cancellation of allotment. Thereafter both the petitions were heard and disposed of by learned single Judge by order dated 6-2-1997. The Writ Petition No. 13629/93 was allowed and the proposed action of the respondents to cancel the allotment was quashed. The Writ Petition No. 12070/93 was dismissed and it was held that the petitioner was bound to pay the cost of plot @ Rs.400/-per Sq. yard and also the other incidental charges that may be payable by him. He was granted three months time from the date of order to make the payment. After this order was passed, the A.P. Housing Board initiated action to collect interest upon the value of Rs-400/- per Sq. yard. The Court had not ordered payment of any interest. Therefore, the petitioner filed a contempt petition being C.C. No. 1214/97 questioning the action of the respondent Board in seeking to charge interest upon the value of the land. After the contempt was filed the A.P. Housing Board immediately withdrew its demand for interest. Accordingly the contempt case was closed on 17-9-97. The petitioner thereafter ultimately made the payment towards the Housing Board and presented the sale deed for registration before the Sub-Registrar, Azampura, Hyderabad for registration under the Registration Act. The petitioner has made payment of Rs. 12,021/-towards stamp duty and registration fee. But, on presentation of the document before the Sub-Registrar the Sub-Registrar referred the document bearing P. No. 719/97 to the Collector and District Registrar, Hyderabad for determination of market value in terms of Section 47-A of the Indian Stamp Act, 1899. In pursuance of said reference the Collector and District Registrar issued notice u/s 47-A of the Indian Stamp Act on 24-9-97. The petitioner submitted his explanation on 25-9-97 taking objection that the price of the land was fixed by the Hon''ble High Court and accordingly it was not open to any authority to revise the value of the land and enhance the stamp duty levied. However, the Collector and District Registrar did not find favour with the objection taken by the petitioner and held that he was bound to follow the mandate of Section 47-A. Accordingly he went on and fixed the land value at Rs. 1,440/-per Sq. yard and levied the stamp duty of Rs-42,100/- and instructed the petitioner to remit an amount of Rs.30,120/- towards the deficit stamp duty. This order has been challenged by this Writ petition.

3. The case revolves around the interpretation given to the Section 47-A. Section 47-A lays down :--

"47-A. Instruments of Conveyance, etc., under-valued how to be dealt with :--(1) Where the registering officer appointed under the Registration Act, 1908, while registering any instrument of conveyance, exchange, gift, partition "settlement or release" reason to believe that the market value of the property which is the subject matter of such instrument has not been truly set forth in the instrument he may, keep pending such instalment and refer the matter to the Collector for determination of market value of such property and proper duty payable thereon.''''

Sub-section (1) of Section 47-A gives the jurisdiction to a registering officer to refer a matter to the Collector for determination of market value of properly which is presented for registration and for which the registering officer has a reason to believe that the market value of the property which is the subject matter of registration has not been truly set forth. The bare reading of sub-section (1) of Section 47-A shows that in order to refer a matter for enquiry the registering officer should have reason to believe that the market value of the property in question is not truly reflected in the instrument presented for registration. So, in order to come to the satisfaction that true value has not been reflected in the instrument the registering officer should have reasons, to refer the matter to enquiry. The present case discloses that the Government decided to sell the land to the petitioner as early as in the year 1987, fixed the price as Rs.600/- per Sq. yard, the petitioner was aggrieved of the rate, he filed a Writ petition and the High Court fixed the price of land at Rs.400/- per Sq. yard. There were some controversies even after that, and two writ petitions came to be filed again which were decided by this Court by common order on 6-2-1997. In this common order the Court found that the value of Rs.400/- per sq. yard fixed by the Court is quite reasonable. Now it is nobody''s case that consideration more than Rs.400/- per sq. yard was paid by the petitioner towards the Housing Board, but it is the case Of the respondents that Rs.400/- per Sq. yard was not the market value of the land on the date the documents were presented for registration. Therefore, it is submitted on behalf of respondents that High Court fixed only the price as the petitioner had complained that he had been charged excessively but that was the matter between the Housing Board and the petitioner, but for the purpose of Stamp duty the Sub-Registrar was bound to ascertain the true value of the property and in enquiry it has been found that the true value of the property would be Rs.1,440/-per Sq. yard.

4. From perusal of Section 47-A it becomes clear that this section has been incorporated by the Legislature only to discourage under-valuation of the properties when they are purchased or sold so that the State docs not lose its revenue. There cannot be any other intention attributable to Legislature than the one pointed out that in cases when actual prices of the properties which change hands in a transaction are much more than the prices reflected in the instruments there are instances where huge amount as consideration is paid but only a smaller portion of the amount is shown as consideration amount in the instrument. Such situations can be taken care of by Section 47-A. Therefore, Section 47-A while referring to the market value of the subject matter it clarifies it with word "truly" and not "correctly". If a person genuinely sells his property

not on the market value but on a value lesser than market value and reflects the same amount in the sale deed or in any other instrument, in my view Section 47-A shall not be attracted, but it will be difficult in situation where for instance land is sold at a much lower price than the actual market value for purchaser to contend that the value reflected in the instrument was true value. But, there can be instances exceptionally like the present one where there is no doubt that the land was sold at Rs.400/- per Sq. yard because the seller is Housing Board and the buyer is the petitioner and the rate has been fixed by the High Court.

5. I am fortified in my view by a judgment of this Court in Vidya Nagar Housing Co-operative Society Ltd. v. State of A.P.. AIR 1995 AP 233. This judgment also lay''s down that the combined reading of subsection (1) and sub-section (6) of Section 47-A makes it very clear that before a registering Officer refers a matter to the Collector for determining market value he must have reason to believe that the consideration amount reflected in the instrument was not truly set forth in the instrument. In the present case, for the registration officer there was no reasons to believe that true value was not reflected in the instrument as the true value of the property had been fixed by the High Court. Sub-section (6) of Section 47-A becomes only operative when registration officer has reasons to invoke his jurisdiction. If there are no reasons for arriving at such satisfaction u/s 47-A, recourse to sub-section (6) of Section 47-A is meaningless. Sub-section (6) only becomes operative and applicable once jurisdiction is validly exercised u/s 47-A(1). In my view, in this case there was no occasion for the registration officer to invoke jurisdiction u/s 47-A at all.

6. The judgment of the Division Bench in Sub-Registrar and Another Vs. Mr. M. Damodar Reddy, referred by learned Counsel for the respondents is not relevant to the facts of the present case. But, it has been stated that the order passed by the Collector was appealable. Therefore, it is true that the Division Bench has held that an appellate forum is provided and therefore an appeal can be preferred. But, in the present case I found that the Sub-Registrar has invoked his jurisdiction erroneously, therefore the petition cannot be thrown out on the sole ground that alternative remedy is available.

7. The reasoning given above is also further fortified by the judgment of this Court being K. Sivaramaiah v. Special Deputy Collector, Urban, Cuddapah 1989 (1) ALT 546. The facts of that case were almost similar to the present case where the land had been sold in public auction and the High Court found "the object underlying Section 47 of the Indian Stamp Act is to neutralise the effect of undervaluation of the immovable property conveyed under registered instruments of sale, or exchange, or gift or partition or settlement. In the instant case there could be no question of undervaluation of the properly as the property was sold in public auction in favour of the appellant. The expression used as "truly" and not "properly" or "correctly". The consideration, the appellant parted with for purchase of the property, it is not denied, was truly set forth in the instrument. It therefore follows that the reference made by the Sub-Registrar,

Pullampet is bad."

8. In view of the above discussion, the order dated 9-12-1997 of the Collector and District Registrar is quashed. The writ petition is allowed. The Sub-Registrar is directed to register the document on the basis of value as reflected in the instrument i.e., Rs.400/- per Sq. yard. No costs.

